UNITED MALAYAN BANKING CORPORATION BERHAD

v.

DATIN THERESAH BTE ABDULLAH & ANOR.

HIGH COURT MALAYA, MUAR
TUAN LOW HOP BING JC
[CIVIL SUIT NO. 22(23) - 7 OF 1993]
21 SEPTEMBER 1994

PRACTICE & PROCEDURE: Order 14 RHC - On demand guarantee - When cause of action arises - Whether plaintiff's claim time barred -Section 6(1)(a) Limitation Act 1953 - Defendants administrators of estate of deceased, a guarantor - Plaintiff obtaining judgment against co-guarantors only - Whether plaintiff barred from suing defendants for failure to proceed against deceased - Whether present claim res judicata - Affidavit in support of plaintiff's application filed after defence filed - Whether affidavit defective - Allegation of ambiguity in identity of bank's customer - Whether any triable issues.

This was an application for summary judgment pursuant to O.14 of the Rules of the High Court 1980 (RHC). The action was based on a demand guarantee in which the deceased was one of the guarantors. There were three main issues before the Court; namely, whether the plaintiff's claim was time barred, whether the plaintiff after having obtained judgment against the co-guarantors except the deceased in a previous suit were prevented from suing the defendants in the present suit and whether the doctrine of *res judicata* was applicable.

Plaintiff's Counsel submitted that since the action was based on a demand guarantee, the cause of action would only arise from service of the notice of demand which was on 17 April 1992 and the action having been filed on 14 February 1993, was well within the 6 year time bar under s.6(1)(a) of the Limitation Act 1953. On the second issue, the defendants claimed that as the plaintiff had proceeded to judgment against the co-guarantors only, the matter was abandoned with no further action. Plaintiff's Counsel submitted that the liability of the guarantors under the guarantee was joint and several and thus the judgment obtained against the co-guarantors in the previous suit did not prevent the plaintiff from taking action against the other co-guarantors including the defendants who were the administratrix and administrator respectively of the deceased's estate. With regard to the third issue, the defendants contended by wilfully and knowingly abandoning the previous suit and commencing the present suit on the same subject matter, the plaintiff was vexatious and oppressive and the suit was an abuse of the process of Court and the claim was *res judicata*. Plaintiff's Counsel submitted that the doctrine of *res judicata* had no application in the present suit as the claim in the previous suit had never been adjudicated upon by the Court.

On a matter of procedure, the defendants contended that the affidavit in support of the plaintiff's application were defective in that the affidavit was filed after the statement of defence. The defendants also submitted that on the evidence and merits the action ought to be tried based on *inter alia* the alleged ambiguity of the identity of the plaintiff's customer.

Held:

[1] The said guarantee was a demand guarantee. In the circumstances no cause of action would arise until service of the notice of demand. In the circumstances the action was not time barred and was brought well within the 6 year period under s.6(1)(a) of the Limitation Act 1953.

[2] Where two or more persons are jointly and severally liable under any contract eg. a contract of guarantee, the liability is not liability in the alternative but it is joint and several. In the event, it is no bar to an action against one defendant even if the plaintiff has obtained judgment against the other defendants.

[3] Since the previous suit had not resulted in any final adjudication, decision, judgment or decree, neither the doctrine of *res judicata* nor the doctrine of constructive *res judicata* had any application to the instant case.

[4] Referring to the affidavit in support of this application, O.14 r.2 of the RHC and the requirement as to the content of the affidavit i.e. that in the deponent's belief there is no defence to this action had been complied with by the plaintiff.

[5] Upon perusal of the guarantee, the person for whom the guarantors agreed to guarantee was Chua Lai Seng who was the plaintiff's customer. The clause appearing after the signatures of the guarantors to the effect that Pembenaan Sri Pati Sdn. Bhd. agreed to be bound by the guarantee did not in any way affect the position that they had guaranteed for Chua Lai Seng. There was no ambiguity pertaining to the identity of the customer.

[Application allowed].

Cases referred to:

Bradford Old Bank, Limited v. Sutcliffe [1918] 2 K.B. 833 ***(refd)***
Mok Hin Wah & Ors. v. United Malayan Banking Corp. Bhd. [1987] 2 MLJ 610 ***(refd)***
Bank Bumiputra Malaysia Bhd. v. Fu Lee Development Sdn. Bhd. & Ors. [1991] 2 MLJ 202 ***(refd)***
Amanah Merchant Bank Bhd. v. Lim Tow Choon [1994] 1 MLJ 413 ***(refd)***
Lee Ah Chor v. Southern Bank Bhd. [1991] 1 MLJ 428 ***(refd)***
Paterson, Simons & Co. (Malaysia) Sdn. Bhd. v. Pembangunan Leasing Corporation Sdn. Bhd. & 2 Ors. [1989] 2 CLJ 209 ***(refd)***
Bank of Canton, Ltd. v. Dart Sum Timber (Pte) Ltd. [1978] 2 MLJ 5 ***(refd)***
Lee Sem Yoong v. Leong Yoong [1967] 2 MLJ 86 ***(refd)***
Kandiah Peter v. Public Bank Bhd. [1994] 1 MLJ 119 ***(refd)***
Citibank N.A. v. Ooi Boon Leong & Ors. [1981] 1 MLJ 282 ***(refd)***
Amanah Merchant Bank Bhd. v. Sumikin Bussan Kaisha Ltd. [1992] 2 MLJ 832 ***(refd)***
UMBC v. Palm and Vegetable Oil [1983] 1 MLJ 206 ***(refd)***
Pembinaan V-Jaya Sdn. Bhd. v. Binawisma Development Sdn. Bhd. [1987] CLJ 446 ***(refd)***

Legislation referred to:

Limitation Act 1953, s. 6(1)(a)
Rules of High Court, O. 14 r.2
"The Code of Civil Procedure" [1908] (Act V of 1908) India, s.11

Other sources referred to:

English White Book 1993, Vol.1 Part I

For the plaintiff - M/s. Tan & Tan
For the defendants - M/s. G.F. Nelson & Co.

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JUDGMENT

Low Hop Bing JC:

This application in enclosure 14 is an application for summary judgment under O. 14 of the Rules of High Court. It is supported by the affidavits (enclosures 15 and 23) affirmed by attorneys of the plaintiff and contested by the affidavit (enclosure 21) affirmed by the first defendant.

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The first defendant is the administratrix and the second defendant administrator of the guarantor, Dato Zakaria bin Sulong, deceased ("the deceased"). At the hearing of this application, learned Counsel for the plaintiff submits that there are 4 issues for determination by the Court and that from the affidavits together with all the exhibits filed herein, it is plain and obvious that these issues are non-triable issues

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and as such there is no defence to this action, as a result of which he prays for summary judgment against both the defendants.

Learned Counsel for the defendants submits that there are numerous triable issues here which can only be resolved by adducing evidence in the hearing of this suit or that "for some other reason there ought to be a trial."

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In order to put the picture in its proper perspective, learned Counsel for the plaintiff submits that the 4 issues are:

1. Whether the plaintiff's claim against the defendant is time-barred?
2. Whether the plaintiff, after having obtained judgment against the other co-guarantors in a previous suit i.e. Muar High Court Civil Suit No:23-14-1987

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("the previous suit") (in which the deceased was also a defendant), but not against the guarantor, the deceased, in the previous suit, is prevented from suing the defendants in the present suit?

3. Whether the defendants in the present suit are not liable because the plaintiff has failed to proceed against the deceased in the previous suit?

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4. Whether the doctrine of *res judicata* applies to the present suit?

Issue 1: Whether the plaintiff's claim against the defendant is time-barred?

Learned Counsel for the plaintiff submits that this action is based on a demand guarantee in which the deceased was one of the guarantors. He says that since it is a demand notice, the cause of action only arises when a notice of demand has been

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served on the guarantor, in this case on 17 April 1992, as a result of which the cause of action arises from this date and the plaintiff has 6 years within which to commence an action against the guarantor. It is submitted for the plaintiff that this action was filed on 14 February 1993 and is therefore well within the 6-year time bar under s. 6(1)(a) of the Limitation Act 1953, being an action founded on a contract of guarantee ("the said guarantee").

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Learned Counsel for the defendants submits that the action is time-barred.

For the purpose of determining this issue relating to s. 6(1)(a) of the Limitation Act 1953, it is necessary to peruse the terms of the said guarantee which is exhibit A in the affidavit enclosure 15 affirmed on behalf of the plaintiff. For this purpose,

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clauses 1, 4 and 11 of the said guarantee are important and are reproduced as follows:

1. I/we **will pay to you on demand** (emphasis added) (subject to the limit hereinafter specified) all money which now is or may during the continuance of this agreement be owing to you from the Customer(s) (whether alone or jointly with another or others) or remain unpaid on the general balance of his/their account with you including all advances overdrafts and discounts made or allowed by you and all bills notes or other instruments held by you on or in respect of which he/they or either/any of them be or have been liable on you all charges for commission and other ordinary banking expenses interest at your usual rate or rates for the time being in relation in such accounts with monthly rests as ordinarily calculated by you although the relationship of banker and customer may have ceased and all costs charges and expenses which you may incur in enforcing or seeking to obtain payment of all or any part of the money hereby guaranteed or in respect of which indemnity is given.

4. This guarantee and indemnity shall be a continuing guarantee and/or indemnity to the limit or extent for principal only of Dollars Six Hundred Thousand Only (RM600,000) for the purpose of securing not merely an equivalent amount but (subject always to the said limit of RM600,000) the whole of the moneys or general balance in the first paragraph hereof mentioned notwithstanding any such payments, receipts or dividends as are hereinafter mentioned with interest on the sum claimable from me/us at the rate of fourteen and a half (14.5) per cent per annum with monthly rests **from the date of your demand for payment thereof.** (emphasis added). In the absence of express written agreement, to the contrary the above limit is to be added to and to be cumulative with the limit or limits specified in any similar agreement or agreements in respect of the Customer's Account which you may now or subsequently hold from me/us so that I/we shall be answerable up to the amount equivalent to the aggregate total of such limits as if I/we had given one guarantee and/or indemnity up to the limit of such aggregate total. The rate of interest provided herein may be varied by you at your discretion by a notice in writing on me/us/the customer(s) and **such amended rate of interest shall be payable as from the date specified in the said notice** (emphasis added) and shall be computed according to your usual mode in dealing with current accounts as well after as before any judgment obtained under any Court action.

...

11. Any **notice or demand** (emphasis added) in relation to matters aforesaid may be effectually given or made to me/us by any officer of the bank or **by notice in writing** (emphasis added) under the hand of such officer either served personally on me/us or left for or sent by post to me/us at my/our usual or last known place of business.

Upon a proper perusal of the aforesaid three clauses, it is my considered view that the said guarantee is a demand guarantee, as emphasized in the words contained in these clauses. The law relating to demand guarantee is settled. In *Bradford Old Bank, Limited v. Sutcliffe* [1918] 2 K.B. 833, the English Court of Appeal held, *inter alia*, that the plaintiff's claim was not barred by the Statute of Limitations, as no cause of action arose against the surety until demand had been made by the plaintiffs.

This English Court of Appeal decision was applied by our Supreme Court in *Mok Hin Wah & Ors. v. United Malayan Banking Corp. Bhd.* [1987] 2 MLJ 610. Salleh Abas. LP, (as he then was) in delivering the judgment of the Court, held that "in the letter

of guarantee the provisions about demand are a real stipulation and not mere words." In this Supreme Court case, the guarantee given in favour of UMBC contains identical provisions. The learned Lord President stated as follows:

> Under clause 1, the guarantors are to pay "on demand all money which now is or may during the continuance of the agreement be owing to you from the customer(s)..." clause 4 requires the sum guaranteed or any balance thereof to be paid with interest from the date of demand for the payment thereof. It is also stipulated at clause 11 that any demand in relation to matters aforesaid may be effectively given or made by any officer of the Bank, either served personally on the guarantors, or sent by post to or at their last known place of business (see *Bradford Old Bank, Limited v. Sutcliffe*). Since bank guarantees invariably specify that the liability of the guarantor is to pay on demand, the words are not devoid of meaning or effect but make the demand a condition precedent to suing the guarantor (see **Paget's Law of Banking,** 9th Edition, 522).

Further, in *Bank Bumiputra Malaysia Bhd. v. Fu Lee Development Sdn. Bhd. & Ors.* [1991] 2 MLJ 202, Zakaria Yatim, J, also followed the *Bradford* case and held that:

> the guarantee provided that the second defendant would pay the plaintiff "on demand". Hence, when the plaintiff made the demand on 29 July on the second defendant a cause of action arose against him and time therefore only started to run from the date of the plaintiff's letter of demand for the purpose of the Limitation Act 1953. Since the present suit was filed on 16 September 1987 the plaintiff's claim against the second defendant was not time-barred.

In the circumstances, I hold that this action is not time-barred and the cause of action is brought well within the 6-year period under s. 6(1)(a) of the Limitation Act 1953.

Still on the issue of the notice of demand, I further hold that where a notice of demand has been issued by the person in whose favour the guarantee was given e.g. the instant case, UMBC and the notice of demand has been issued by the bank's solicitors on 17 April 1992 by way of certificate of posting to both the defendants under clause 11 of the said guarantee, such notice is a valid notice.

In *Amanah Merchant Bank Bhd. v. Lim Tow Choon* [1994] 1 MLJ 413 clause 17 in the guarantee stated that

> any notice may ..... be served by sending the same through the post..... to the last known place of address of the person to be served and..... shall be deemed to be served on the day following that on which it is posted.

The central issue in the appeal was whether, on the proper construction of cl.17, it could be held that it was sufficient to prove that the notice of demand was duly served on the respondent by sending the same through the post in an envelope addressed to the last known address of the respondent. The Supreme Court held, *inter alia*, once it was established that the notice of demand was sent through the post in an envelope addressed to the last known address of the defendant, clause 17 applied so that the notice is regarded as a valid notice.

The same approach was adopted by the Supreme Court in *Lee Ah Chor v. Southern Bank Bhd.* [1991] 1 MLJ 428. There, clause 11 of the guarantee reads as follows:

> Any notice or demand in relation to the matters aforesaid **may be effectively given** or made to me/us by any officer of the bank or by notice in writing under the hand of any such officer either served personally on me/us or left for or sent by post to me/us at my/our usual or last known place of business in....." (emphasis added).

The Supreme Court held, *inter alia*, that:

> In the present case, as clearly provided by cl.11 of the first guarantee, the mode of serving the notice can either be made by an officer of the bank or by the solicitor as agent of the bank and therefore the service of the notice by the solicitor acting for the respondent is a valid notice.

By reason of the foregoing authorities, it is my considered opinion that it is plain and obvious that this issue is settled and unarguable.

Issue 2: Whether the plaintiff after having obtained judgment against the other co-guarantors in a previous suit is prevented from suing the defendants in the present suit?

In other words, whether the defendants are not liable because the plaintiff failed to proceed against a co-guarantor Dato Zakaria bin Sulong in the previous suit.

Although learned Counsel for the plaintiff has classified these questions as two issues, I am of the view that it is convenient to consider these questions jointly. It is submitted for the plaintiff that the said guarantee gives rise to a joint and several liability and the guarantors are jointly and severally liable thereon. That being the case, it is further submitted that the judgment obtained against the other co-guarantors in the previous suit does not prevent the plaintiff from taking action against the other co-guarantors including the defendants who are the administratrix and the administrator respectively of the estate of the deceased.

For the defendants it is submitted that the plaintiff has proceeded to judgment against the defendants except the deceased and so the matter was abandoned with no further action.

In deciding on this question, I have taken into consideration the fact that the guarantee is a joint and several guarantee, wherein the guarantors' liability is joint and several.

Where two or more persons are jointly and severally liable under any contract e.g. a contract of guarantee, the liability is not liability in the alternative but it is joint and several. In the event, it is no bar to an action against one defendant even if the plaintiff has obtained judgment against the other defendant/s: *Paterson, Simons & Co. (Malaysia) Sdn. Bhd. v. Pembangunan Leasing Corporation Sdn. Bhd. & 2 Ors.* [1989] 2 CLJ 209.

The plaintiff has in the instant case given the reason for not seeking and obtaining judgment against the deceased although judgment was sought and obtained against all the other co-guarantors. The reason was that there was no cause of action against him on 6 June 1985 when no notice of demand was served on him before he died - this being a demand guarantee under which no cause of action could ever arise unless and until the notice of demand has been served on the guarantor.

Further, when the plaintiff filed the present suit, the plaintiff has elected to proceed with the present suit and consequently not to proceed or has abandoned the previous suit: *Bank of Canton, Ltd. v. Dart Sum Timber (Pte) Ltd.* [1978] 2 MLJ 5.

By reason of the foregoing authorities, I hold that the issues are plain and obvious which leave no room for controversy, dispute or argument.

Issue 3: Res Judicata

For the defendants, it is contended in paragraph 4 of the statement of defence that by pursuing in the previous suit against all the defendants, except the deceased, the plaintiff has by conduct waived or released the deceased from liability. It was also argued that by wilfully and knowingly abandoning the previous suit and commencing this new suit on the same subject-matter, the plaintiff is vexatious and oppressive and the present suit is an abuse of the process of Court. Further, the defendant states that the present claim against the defendants herein is res judicata (constructive).

In support of the above contention, learned Counsel for the defendants submits that a man shall not be vexed twice for one and the same cause and he cited a passage on constructive *res judicata* from s.11 of "The Code of Civil Procedure" [1908] (Act V of 1908) India, and the explanation therein.

It is submitted for the plaintiff that the doctrine of *res judicata* has no application in the present suit, because the claim in the previous suit against the deceased has never been heard nor finally decided by the Court. In other words, the Court in the previous suit has never adjudicated upon it.

After giving the above submissions my anxious consideration, I hold that on the facts of the instant case, the doctrine of *res judicata* has no application. In *Lee Sem Yoong v. Leong Yoong* [1967] 2 MLJ 86 Gill, J. (as he then was) held, at Pg. 88B right column, as follows:

> For the doctrine of **res judicata** to apply a defendant has to show that there was a former suit between the same parties for the same matter and upon the same cause of action, and also that the matter directly and substantially in issue has been heard and finally decided by the Court which heard it. (emphasis added).

In that case, where the former suit between the parties was for the same matter and upon the same cause of action, but the matter directly and substantially in issue was never finally decided, the plea of *res judicata* was not available to the defendant.

In *Kandiah Peter v. Public Bank Bhd.* [1994] 1 MLJ 119, Eusoff Chin, SCJ (as he then was) held, *inter alia,* that:

> It is equally settled law that in order for the doctrine of *res judicata,* cause action estoppel or issue estoppel to apply the earlier proceedings must have resulted in a **final** judgment or decree: **Halsbury's Laws of England** (4th Edition) para 1519.

Since the previous suit has not resulted in any final adjudication, decision, judgment or decree, I hold that neither the doctrine of *res judicata* nor, according to the learned Counsel for the defendant, the doctrine of constructive *res judicata,* has any application to the instant case.

Further Grounds Advanced for the Defendant

Learned Counsel for the defendants further contested this application on three grounds *viz*:

(i) Procedure

(ii) Evidence

(iii) Merits

(i) *Procedure*

On the question of procedure, it is the defendants' contention that the affidavits in support of the plaintiff's application is defective, in that the affidavit was filed on 28 September 1993 which was after the statement of defence was filed on 2 September 1993. The following passage in the **English White Book** 1993, Vol.1 Part I is quoted in support thereof:

> If any defence, however demonstrably false it may be, has been served, it is essential that the affidavit in support averts to this and then goes on to depose that notwithstanding such defence the deponent believes that there is no defence and explains why this is so. Not to do so is inconsistent with the duty of candour to the Court in interlocutory matters. It follows that a proforma affidavit should not be used in such circumstances.

Learned Counsel for the plaintiff thinks otherwise.

In this connection, I have referred to the affidavit in support of this application. Paragraph 5 thereof stated that the deponent verily believes that there is no defence to this action, which is in compliance with form 18 under O. 14 r.2 of the Rules of High Court 1980 which provides that the affidavit is to state that in the deponent's belief there is no defence. That is what has been done here. I therefore hold that O. 14 r. 2 and the requirement as to the content of the affidavit have been complied with by the plaintiff.

(ii) *Evidence and*

(iii) *Merits*

It is the submission of the learned Counsel for the defendants that on the evidence and merits, the action should go on for trial and that there should be no summary judgment. The main grounds which the defendants rely upon are:

(1) Identity of the customer - where it is Chua Lai Seng or Pembenaan Sri Pati Sdn. Bhd;

(2) There is an ambiguity in the identity of the customer;

(3) Parol evidence should be adduced at the trial to establish who was actually the customer;

(4) The *contra proferentum* rule of construction should apply to resolve the ambiguity.

Learned Counsel for the plaintiff submits that there is no triable issue as to the identity of the customer and that this action is a fit and proper case for summary judgment to be given in favour of the plaintiff.

For the purpose of deciding on this point, it necessary for me to peruse the said guarantee. Clause 1 of the guarantee provides as follows:

> In consideration of your agreeing at my/our (joint and several) request to continue/ open a current account and to give credit to **Chua Lai Seng** (Nric No.: 4492199) (hereafter called "the Customer/s", I/we hereby (jointly and severally) agree to guarantee and/or indemnify you as follows:

It is therefore clear that the customer for the purpose of the said guarantee is Chua Lai Seng and the guarantors have agreed to provide guarantee with Chua Lai Seng as the customer of UMBC.

For the defendants, it was further submitted that after page 3 of the said guarantee (which contains the signatures of all the guarantors and their addresses), at page 4 therein, there is a clause which reads as follows:

> I/We, Pembenaan Sri Pati Sdn. Bhd. of No. 314A, Jalan Ampuan, Taman Ampuan, Batu Pahat, Johore, the abovenamed Customer(s) hereby agree to be bound by the terms of this guarantee and indemnity so far as they affect me/us or relate to my/our account with the bank and in particular to the provisions of clause 5(ii) thereof.

The defendants contend that there is therefore an ambiguity as to who the Customer of the bank is.

It is the contention of the plaintiff that there is no ambiguity.

After a proper perusal of the said guarantee, I find that the person for whom the guarantors have agreed to guarantee is Chua Lai Seng who is the customer of UMBC. The guarantors have signed the said guarantee to that effect. The clause which appears after they have signed the said guarantee does not in any way affect the position that they have guaranteed for Chua Lai Seng. They have not guaranteed for Pembenaan Sri Pati Sdn. Bhd. The aforesaid clause is self-explanatory and cannot be construed as a derogation or detraction from the liability of the guarantors qua guarantors. That clause after the guarantors' signatures does not and cannot vary the guarantors' joint and several liability thereunder. It is clear from that clause that it is included to make Pembenaan Sri Pati Sdn. Bhd. as an additional collateral guarantor in favour of UMBC but does not mean that the guarantors who have signed on page 3 of the guarantee will not be liable, neither was there any ambiguity pertaining to the identity of the customer.

The law relating to summary judgment is settled. Where the plaintiff's claim is plain and obvious, summary judgment ought to be given.

In *Citibank N.A. v. Ooi Boon Leong & Ors.* [1981] 1 MLJ 282, which is also a case relating to a contract of guarantee, the then Federal Court held, *inter alia* as follows:

> We have often said in this Court many a time that where all the issues are clear and the matter of substance can be decided once and for all without going to trial, there is no reason why... a Judge in chambers ..... shall not deal with the whole matter under the O. 14 procedure." (per Raja Azlan Shah, CJ (Malaya) (as he then was).

In *Amanah Merchant Bank Bhd. v. Sumikin Bussan Kaisha Ltd.* [1992] 2 MLJ 832, VC George, J. held, *inter alia*, that ... however difficult the point of law is, once it is understood and the Court is satisfied that it is really unarguable, it will give final judgment.

There is also an application for the Court to admit a further affidavit filed on behalf of the defendant. I have allowed the affidavit to be read in the defendant's submission against the plaintiff's application for summary judgment. I have taken this further affidavit into account.

The issues raised in this further affidavit touch and concern the status of Chua Lai Seng as a shareholder and director of Pembinaan Sri Pati Sdn. Bhd., the offence of criminal breach of trust committed by Chua Lai Seng for which he has been convicted and sentenced to 5 years imprisonment, the overdraft granted to Chua Lai Seng as the customer of the Plaintiff, the preparation, execution, presentation and registration of the charge documents as security for the said overdraft and finally the illegality of the loan.

These issues were never pleaded in the statement of defence. It is trite law that parties are bound by their own pleadings. This further affidavit cannot be used as an improved version of the statement of defence: *UMBC v. Palm and Vegetable Oil* [1983] 1 MLJ 206, as followed in *Pembinaan V-jaya Sdn. Bhd. v. Binawisma Development Sdn. Bhd.* [1987] CLJ 446.

In the circumstances, I hold that this affidavit does not render any assistance to the defendant in the contest against the plaintiff's application for summary judgment under O. 14.

By reason of the foregoing, I make an order in terms of this application in enclosure 14.